UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America, Plaintiff,	)	File No. 18-CR-90 (RWP/CFB)
v.	)	St. Paul, Minnesota
Robert Phillip Ivers,	)	September 14, 2018
Defendant.	)	8:30 a.m.

BEFORE THE HONORABLE ROBERT W. PRATT
UNITED STATES DISTRICT COURT JUDGE
(JURY TRIAL - VOLUME IV)

APPEARANCES

For the Plaintiff:	**U.S. ATTORNEY'S OFFICE** **TIMOTHY RANK, AUSA** **JULIE ALLYN, AUSA** 300 S. 4th St., #600 Minneapolis, Minnesota 55415
For the Defendant:	**KELLEY, WOLTER & SCOTT, P.A.** **DANIEL SCOTT, ESQ.** **BRETT KELLEY, ESQ.** 431 S. 7th St., #2530 Minneapolis, Minnesota 55415
Court Reporter:	DEBRA K. BEAUVAIS, RPR-CRR 300 S. 4th St., #1005 Minneapolis, Minnesota 55415

Proceedings recorded by mechanical stenography; transcript produced by computer.

I N D E X

IN OPEN COURT

(JURY NOT PRESENT)

THE COURTROOM DEPUTY: All rise.

THE COURT: Please be seated.

Good morning. The record should show the Court sent the final jury instructions to the parties last evening. I have two comments: One for Mr. Rank regarding Instruction No. 10, page 14, and a request regarding an admonition to the jury that the punishment, if any, is for the Court, not the jury.

So, Mr. Scott, do you have some suggestions, objections, corrections for the Court?

MR. SCOTT: Yes.

THE COURT: All right.

MR. SCOTT: Let me start first with the date, Your Honor. Given the nature of this case, which is that much of the testimony in this case covered areas in 2016, 2015, even some cross earlier than that, 2017, there's no -- we want the Court -- and we think the jury instructions should make clear that the date of this offense. And your Instruction 8, which is the indictment; 9, Count 1; and 10, Count 2 do not delineate a time frame. We think that Instruction No. 9, Instruction No. 10, the first element should have the date, which is -- let's take Instruction No. 9. It says, "One, the defendant made a threat to murder a United States

judge." It should say: On or about February 27, 2018 the defendant. And the same thing for Instruction 10, which on one it should say: On or about February 27th, 2018. Start with, I think, the date that the crime is alleged to have committed is --

THE COURT: Just a minute. So on 10 you want after One: The defendant knowingly sent a communication containing a threat to injure another person on or about -- no.

MR. SCOTT: Open with that: On or about February 27th, 2018.

THE COURT: Okay, open with that. So in the introductory phrase: The crime of interstate transportation, that's where you want it?

MR. SCOTT: No, I want -- well, one -- let's take Instruction 10.

THE COURT: Okay.

MR. SCOTT: The elements are 1 comma. Right there it should say: On or about February 27, 2018.

THE COURT: All right. That's your request?

MR. SCOTT: That's the initial request for both Instruction 10 and Instruction 9.

THE COURT: All right. Thank you.

Anything else?

MR. SCOTT: Oh, yes.

THE COURT: Okay.

MR. SCOTT: Although some of this is a reiteration of what we had in the past.

THE COURT: All right.

MR. SCOTT: For Count 1, which is Instruction No. 9, Your Honor, it -- first and foremost, again, I think that the temporal part of the definition of a threat needs to be in the indictment. We had suggested that it be in the count. But we also had it in our, unfortunately unnumbered, proposed instruction, but we had temporal at page 31 of ours, which is that "a reasonable person would interpret as a serious expression of an intention to murder a federal judge now or in the future." And we had it in our explanation -- explanatory definitions, our unnumbered instruction at page 33, which covered the First Amendment rights. That also talked about the same exact words: "A reasonable person would interpret as a serious expression of an intention to murder a federal judge now or in the future." We believe that is the case law, Your Honor, to start with. That it's important -- the temporal part is important in this case because it is our belief and, in fact, the Court even addresses it in an odd way in its instructions, that whether the statements of the defendant are meant to be in the future even if they are said in the past is something for the jury to look at, that it

acknowledges that that temporal issue is here before the jury. If his words are talking about past actions, then the government is going to have to prove more to show that, despite the words, it's an intent to do something in the future.

At no place in either of those instructions -- either for Count 1 or Count 2 -- do you place presently now or in the future or presently in the future to quote the exact words the court uses in *Doe* and lots of other cases. At no place do you put that in and tell the jury that that's important, that it is part of what the threat is. I think in -- and so that applies to both Count 1 and Count 2, Instruction 9, Instruction 10.

THE COURT: Where do you want "now or in the future"? Let's start out with Instruction 9, page 12.

MR. SCOTT: Okay. Instruction 9, page 12 should be in, again, element one: The defendant made a threat to murder a federal judge now or in the future.

THE COURT: Okay.

MR. SCOTT: Second, Your Honor, I think in Count 1 -- in Count 1 you do not address the subjective intent of the defendant that's required under *Elonis* at all; I think you do in Count 2, which is element number 3 in Count 2, but you do not in Count 1.

In Count 1 the subjective intent of the defendant

as it relates to the threat is not addressed by the Court in its instruction at all.

THE COURT: So you want element 3 in 10 to be element 3 in 9?

MR. SCOTT: It should probably be element 2 in 9, yes, Your Honor, so that we have the objective and the subjective in both of the counts, because you've got an intent related, but that's really purpose. His purpose is to retaliate. That's independent of the threat. It's just the motivation behind the threat or what the threat is intended to accomplish, which is to retaliate. I'd say it's more a motive than a purpose. But that's entirely separate, as to whether it's a threat. That's just the motivation behind the threat. That doesn't go to whether a person subjectively intends it as a threat. And I think *Elonis* requires that and it should be in Count 1, as well as Count 2.

Again, we made those same suggestions in our instructions as to Count 1 and Count 2, which are in, again, page 31 of our instructions and page 38 of the instructions.

THE COURT: Do you think the jury instruction committee got this wrong, because 9 and 10 come directly from the instructions on the website?

MR. SCOTT: Your Honor, if the instructions on the website for 115 say that, then those instructions are

absolutely wrong. I think the instructions go to 875. And in that you've got an expression that covers *Elonis*, which was your third element for 10. But for some reason, two elements in -- basically the same crime but just a different motivation. I mean, the first crime the motive is relevant. The second crime the transport is relevant. But underneath it the threat is the same. It has the same components. It has an objective component to decide whether it's a threat and a subjective to decide whether he meant it.

THE COURT: My clerk has corrected me. Nine is not from the committee, 10 is.

Okay. What else do you have?

MR. SCOTT: I have one that may be more a complaint about the Eighth Circuit pattern, its general pattern instructions, but I think "knowingly" ought to be in. We submitted "knowingly," that it's not done by absence, mistake, action, or other innocent reason. And we put "knowingly" and "willfully" in ours, but certainly "knowingly" I think is required. We put that in each of ours. I know that the Eighth Circuit pattern instructions are not big fans of "knowingly."

THE COURT: Okay. So now you're discussing 11?

MR. SCOTT: It might be. I don't have 11 right now, Your Honor. I have to flip over. Yes, Your Honor. That's different than the knowledge instruction I submitted.

I submitted the more old-fashioned instruction, which is not as an absence of mistake, accident or other reason.

THE COURT: So you want in 11 -- as I get what you're telling me, you want the word "knowingly"?

MR. SCOTT: Yes. And we submitted that in our instructions, Your Honor, at page 34 of our instructions at the bottom of the page. That one relates to -- it's the same instruction we give twice, but that relates to Count 1. There is the identical language in our instruction relating to Count 2, which is found on page 41 of the filed requested instructions.

Your Honor, let me just go back to one looking at my notes for just a second. Instruction No. 9, your instruction for Count 1, in the paragraph -- the longer paragraph after the two elements that starts with "a threat," the second sentence in that says a statement they qualify "even if the defendant," and you have "did not intend to carry out, did not have the ability." I have no problem with that. "Did not subjectively intend for the recipient to understand the communication as a threat," I think that's the exact opposite of what *Elonis* requires.

So if you put the third element into Count 1 that you have in Count 2, I think you have to take out the "did not subjectively intend for the recipient to understand the communication as a threat," because I think that is *Elonis*.

THE COURT: Anything else?

MR. SCOTT: No, Your Honor.

THE COURT: All right. Thank you.

Mr. Rank.

MR. RANK: Thank you, Your Honor. Let me try to take this one thing at a time.

THE COURT: Yes.

MR. RANK: First of all, with respect to the date, on or about February 27th, the government doesn't object to that. I think that's a fine suggestion.

THE COURT: Okay.

MR. RANK: I would ask, Your Honor, though, that if we put in that it took place on or about February 27th, 2018 we get the model instruction for "on or about," so the language instructing with the jury -- the phrase "on or about" means to the jury. I think if we add that --

THE COURT: If the parties are --

MR. SCOTT: I may have actually said it once, but, yeah, the "on or about" language is -- that's the standard language. I don't mind.

THE COURT: That's fine. The government need not -- the instruction says the government need not prove the specific date.

MR. SCOTT: Sure. I don't have a problem with that at all.

THE COURT: Right. Right. I think it's entitled "on or about," the instruction.

MR. RANK: Thank you, Your Honor.

THE COURT: Right.

MR. RANK: With respect to the other points -- many of the other points, Mr. Scott is right, these are all things that were considered by the Court before the issuance of the pretrial instructions and, in particular, with respect to the additional language that's not in the Eighth Circuit model instructions. The Court, I think, properly adopted the Eighth Circuit model instructions with respect to the definition of a threat.

In particular, Your Honor, Mr. Scott talks about the intent to murder the federal judge and says that there should be a subjective intent element in this. We briefed this issue before trial in reference to the *Wynn* case. And Your Honor actually specifically mentioned the *Wynn* case at the pretrial conference in this case, which deals with -- it's a post-*Elonis* case in which it deals with what is needed to be proved in order to make a 115 case. So a Section 115 case requires what is in the Court's instruction.

So what the Court has already instructed, what are in these instructions are consistent with what the Eighth Circuit approved in the *Wynn* case. And that *Wynn* case was

decided after *Elonis* and actually considered *Elonis* in determining whether that was an appropriate instruction. So the instruction that's in the Court's instructions for Section 115 is consistent with the instruction approved by the Eighth Circuit in the *Wynn* case. And the *Wynn* case specifically considered the *Elonis* case when making that decision.

THE COURT: *Wynn* is Instruction No. 9, elements of the offense, Count 1.

MR. RANK: Yes, sir.

THE COURT: *Elonis* is elements of the offense, Count 2.

MR. RANK: That's correct, Your Honor, because *Elonis* dealt with a Section 875 case specifically, and that's referenced in the Eighth Circuit model instructions, which were also done after *Elonis* and specifically considered *Elonis* in creating those model instructions.

So both the *Wynn* case and the Eighth Circuit model instructions considering 875(c) specifically considered *Elonis* in determining the appropriate elements for those offenses.

So with respect to the two suggestions by Mr. Scott: one, that there be an additional element of subjective intent in Count 1, that's not consistent -- that's inconsistent with the *Wynn* case. And so there should

be no third element. And also the portion where he wanted to strike the language "did not subjectively intend for the recipient to understand the communication as a threat," that should not be struck because that language is consistent with what the Eighth Circuit ruled in the *Wynn* case.

With regard to the request for a knowingly instruction, Your Honor --

THE COURT: Yes.

MR. RANK: -- the government has no objection to that. So in the -- I guess it is Instruction No. 11 --

THE COURT: Yes.

MR. RANK: -- if the Court wishes to include both an intent definition and a knowingly definition, we don't have a problem with that.

THE COURT: All right. So you have two agreements with Mr. Scott and two disagreements.

MR. RANK: That's correct, Your Honor. And I think the two disagreements the Court has already ruled on.

THE COURT: Okay.

MR. RANK: And then with respect to the requests by the government, I don't know if the Court wishes to be heard on -- for us to speak as to those issues?

THE COURT: I put your request in from last evening. That's already in, I think.

MR. RANK: Okay. Thank you, Your Honor.

THE COURT: And the second request is a reference to punishment. Beyond duty to deliberate, that is the last instruction.

MR. RANK: That's correct. My concern, Your Honor, is that Mr. Ivers repeatedly and unsolicitedly and emphatically yesterday yelled out "I'm facing 15 years, I'm facing 15 years," suggesting a nullification issue to the jury. And I think it's important that in light of the specificity and repetition of Mr. Ivers yelling that out in an unsolicited way that the Court should specifically address it.

THE COURT: Right. I don't know if the -- I don't have any problem with saying it twice, because your request was during his testimony the defendant stated he was facing 15 years in prison, you are instructed that if the defendant is found guilty, the sentence to be imposed is my responsibility. And then we go on to tell them there's no mandatory penalty. I don't think we ought to tell them anything about the penalty.

MR. RANK: I would ask, though, Your Honor -- well, he has said something about the penalty and that's why I think it's important.

THE COURT: He did.

MR. RANK: That is sitting out there, Your Honor, that the jury has been told more than once that he's looking

at 15 years.

THE COURT: Okay.

MR. RANK: So at least -- and that's why I think something to the extent that -- maybe not that that sentence regarding mandatory penalty, but at least the portion that says consequently if convicted the decision whether to impose a sentence that includes a term of confinement is solely up to the Court I think is an accurate statement of the law.

THE COURT: And you want that as a separate instruction?

MR. RANK: Please, Your Honor. And I would like it before the last thing sending them to the jury. I think the duty-of-the-jury instruction is a good idea. I think it should be given at the same time. But I think in light of what we closed with yesterday was Mr. Ivers repeatedly yelling that he's looking at 15 years that it's appropriate in this case to focus the jury's attention on that and make clear to them that they should not take punishment into consideration.

THE COURT: All right. Thank you. Anything else?

MR. RANK: No, Your Honor.

THE COURT: Mr. Scott, I just need a response. What's your response to counsel's point about 9? Number 9 reflects *Wynn* and nothing more need be said than what's

already in 9.

MR. SCOTT: Well, Your Honor, first is that *Wynn* was a case in which the jury instructions that went to the jury in that case were pre-*Elonis* instructions.

THE COURT: Right.

MR. SCOTT: And then the case came up to the circuit, and the circuit upheld the conviction, and the judge made a remark that he thought the instructions were fine. I think it was Judge Loken that made the remark that he thought the instructions were fine. I'm not so sure that he worked his way through those instructions in *Elonis*. He discussed *Elonis* in terms of the sufficiency of the evidence, and then he mentioned the instructions as part of that.

You know, I don't think the Eighth Circuit has ever specifically upheld these type of instructions without *Elonis* when it's faced them head-on after an *Elonis* case. I think the government goes forward in their peril to say that the Supreme Court decision, which clearly applied to the definition of threat and what it was, suddenly doesn't apply to 115. I think they go forward at their peril. I think that the Court should save them from that because I think it's wrong.

THE COURT: Right, but I thought the 115 discussion -- there's very little discussion about the --

because the government conceded at argument. I think Judge Loken said the government conceded at argument. They agreed that *Elonis*, that happened after the trial and before the appeal, applies. But as to the other count, they did have a discussion about why that was the appropriate instruction.

MR. SCOTT: I've made, I think, my record, Your Honor. I think if 115 comes up to the circuit or beyond, if it ever does, that that decision is going to be distinguished.

THE COURT: Yeah, the way I read *Elonis* is that it's the B part of the statute, and the other two sections require knowledge, this section doesn't. And the Chief Justice said you've got to give knowledge so you don't sweep in "innocent people." I think that was the thrust of what he said. Okay. Well, I'll consider it and we'll make our record in just a minute.

And what do you think of -- Mr. Scott, what do you think of the request by the government regarding punishment?

MR. SCOTT: Well, Your Honor, it is the law that punishment is not for the jury and it's for the Court. Language for that is in almost all standard jury instructions.

THE COURT: Okay. Well, I'm going to say something about it because of yesterday's record.

MR. SCOTT: I've not got a problem with that, Your

Honor.

THE COURT: All right. We'll reconvene in, like, 15 minutes and then you can argue. We'll be in recess.

THE COURTROOM DEPUTY: All rise.

(A brief recess was taken.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Please be seated. The record should show we're proceeding in open court without the jury.

With regard to the record made earlier by counsel for the government and the defense, the Court has added to Instruction 9 and Instruction 10 the "temporal" request by Mr. Scott unobjected to by Mr. Rank.

With respect to the Instruction No. 9 elements of the offense, Mr. Scott is correct that the discussion by the Court of Appeals is very brief. It's one paragraph entitled, "Was the jury properly instructed" at page 785. Nonetheless, the Court is going to stick with the instruction as I made it initially. So the objection that it doesn't comply with the law is overruled.

With regard to what I have added as 12, it expands the original instruction on proof of intent or knowledge to now add "knowingly." I believe that's agreed to between the parties. I adopted -- there was a little difference between Mr. Rank and Mr. Scott's; I took Mr. Rank's language.

As to Mr. Rank's request regarding the record that

has a comment by the defendant, or perhaps two comments or more than that, about the punishment, I've added 15, which will be read. The way I do this is I read 15, let the lawyers argue, and then I read duty to deliberate. I've added role of the Court as No. 15. I didn't know what else to call it. So that's the record on the instruction.

One other thing that I had overlooked, earlier there was some discussion -- I don't think it came up this morning -- the government was concerned that the defense was going to talk about lack of evidence and refer to the quashing of the subpoena or the failure to have Judge Wright appear. I think that the record demonstrates, at least I find, that Judge Wright is equally unavailable to both parties, therefore, there should be no comment about the government's failure to call Judge Wright.

So other than finding my law clerks, I don't know what else we have to wait for. Is there anything else that I've overlooked?

MR. RANK: Your Honor, the only thing I would ask is that -- thank you very much for the addition of Instruction 15. I would ask that you include the sentence that is from Model Instruction 3.12 at the end of that, which would be a sentence you are not to consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt. That's, again, the role of

the judge. That's that sentence directly out of 3.12. So it's --

THE COURT: So you want me to add what I have in 16 again back in 15?

MR. RANK: Just that last sentence, Your Honor. So everything about the Court's proposed Instruction 15 I agree with. I would just ask that the Court also include that last sentence that's included in 3.12, which instructs not only is it the role of the Court, but also tells them that they can't consider it as part of determining whether the government has proved its case beyond a reasonable doubt.

MR. SCOTT: Your Honor, if you felt you correctly used those words in your Instruction 16 --

THE COURT: Yeah, I'm just going to leave it just the way it is. I will leave the role of the Court 15, the way I have it, and then I will read the way I have 16.

MR. RANK: Thank you, Your Honor.

THE COURT: Do you want to get the jury.

My understanding of your Rule 39 is that you both have an hour. Is that right?

MR. SCOTT: Yes, Your Honor.

Your Honor, I'm sorry, before we bring the jury in in a second, at the close of all of the evidence are you going to rest in front of the -- did you rest in front of

the jury at the end of the day?

MR. RANK: We rested in front of the jury in our case-in-chief. I'm happy to rest on the record. I don't feel the need to rest on the record and say no rebuttal. We can do that off the record or outside the presence of the jury.

MR. SCOTT: With the government resting in rebuttal, all of the evidence is in, we would renew our Rule 29 motions.

THE COURT: Okay. Thank you. And the record should show the Court has considered those taking the evidence in the light most favorable to the government, as I must, and the motions are overruled under Rule 29.

THE COURTROOM DEPUTY: All rise for the jury.

IN OPEN COURT

(JURY PRESENT)

THE COURT: Please be seated.

Good morning. Ladies and gentlemen, here's the way we're going to proceed this morning: I'm going to read you 16 instructions. I'm going to read the first 15 instructions. You'll be able to follow along, and you'll have them in your jury room. After I finish with the 15 of the 16 instructions, you'll then hear final arguments, first from one of the lawyers for the defendant -- you'll hear from one of the lawyers for -- you'll hear from one of the

lawyers for the government. You'll then hear from one of the lawyers from the defense. And then because, as you know, the government has the burden of proof, they have a rebuttal argument as well. And then the case will be yours.

No judge should ever instruct a jury as to length of deliberation. That's entirely for you to determine. So once you get the case, it's yours. You can deliberate as long as you want, and I'll be here.

In the United States District Court for the District of Minnesota, Case No. 18-00090, United States of America, Plaintiff, v. Robert Phillip Ivers, Defendant. Final Jury Instructions. Table of Contents. The first page has a table that you can go back to if you're discussing one of the jury instructions.

Members of the jury, the Court now gives you the following instructions:

Instruction No. 1, Introduction

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during the

trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Instruction No. 2, Duty of the Jury

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

Instruction No. 3, Evidence

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated -- that is, formally agreed to by the parties.

You may use reason or common sense to draw deductions or conclusions from facts which have been

established by the evidence in the case.

Certain things are not evidence. I will list those things again for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

Instruction No. 4, Direct and Circumstantial Evidence

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence -- such as the testimony of an eyewitness.

The other is circumstantial evidence -- the proof of a chain of circumstances pointing to the commission of the offense.

The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive. The law simply requires that, before convicting a defendant, the jury must be satisfied of a defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

Instruction No. 5, Jury's Recollection Controls

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or counsel.

You are the sole judges of the evidence received in the case.

Instruction No. 6, Credibility of Witnesses

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for

testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

After making your own judgment or assessment concerning the believability of a witness, you can then attach such importance or weight to that testimony that you feel it deserves.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

Instruction No. 7, Impeachment of a Witness

The testimony of a witness may be discredited or, as we sometimes say, impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court. The earlier inconsistent or contradictory statements are

admissible only to discredit or impeach the credibility of the witness and not to establish the truth of these earlier statements, made somewhere other than here during the trial. It is the province of you, the jury, to determine the credibility, if any, to be given the testimony of a witness who has made prior inconsistent or contradictory statements.

If a person is shown to have knowingly testified falsely concerning any important or material matter, you obviously have a right to distrust the testimony of such an individual concerning other matters. You may reject all of the testimony of that witness or give it such weight or credibility as you may think it deserves.

Instruction No. 8, Indictment

The indictment in this case charges the defendant with two different crimes.

The defendant has pleaded not guilty to each of these charges.

The indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The indictment is not evidence. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The defendant is not on trial for any act or any conduct not specifically charged by the indictment.

The presumption of innocence alone is sufficient to find the defendant not guilty of each count. This presumption can be overcome as to each charge only if the government proved during the trial, beyond a reasonable doubt, each element of that charge.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offense charged.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the government throughout the trial.

Instruction No. 9, Elements of the Offense - Count One

The crime of threatening to murder a United States judge, as charged in Count One of the indictment, has two essential elements, which are:

One, on or about February 27, 2018, the defendant made a threat to murder a United States judge;

Two, the defendant did so with the intent to retaliate against such Judge on account of the performance of the Judge's official duties.

A threat for the purpose of Count One is a communication that a reasonable recipient, who is familiar

with the context of the communication, would interpret as a threat of injury. A statement may qualify as a threat even if the defendant did not intend to carry out the threat, did not have the ability to carry out the threat, did not subjectively intend for the recipient to understand the communication as a threat, and even if the defendant communicated the threat to someone other than the intended victim.

If all of the elements for threatening to murder a United States judge, as charged in Count One, have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged in that count, otherwise, you must find the defendant not guilty.

Instruction No. 10, Elements of the Offense - Count Two

The crime of Interstate Transmission of a Threat to Injure the Person of Another, as charged in Count Two of the indictment, has three elements, which are:

One, on or about February 27, 2018, the Defendant knowingly sent a communication containing a threat to injure another person,

Two, the communication was sent in interstate commerce, and

Three, the defendant sent the communication for the purpose of issuing a threat or with knowledge that the communication would be viewed as a threat.

If all of these elements of Interstate Transportation of a Threat to Injure a Person of Another, as charged in Count Two, have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged in that count; otherwise, you must find the defendant not guilty of the crime charged in that count.

In determining whether the defendant's communication was sent for the purpose of issuing a threat or with knowledge that the communication would be viewed as a threat, you may consider all the circumstances surrounding the making of the communication. For example, you may consider the language, specificity, and frequency of the threat; the context in which the threat was made; the relationship between the defendant and the threat recipient; the recipient's response; any previous threats made by the defendant; and whether you believe the person making the threat was serious, as distinguished from mere idle or careless talk, exaggeration, or something said in a joking manner.

You may draw inferences from the defendant's subjective intent by considering how a reasonable person would understand the defendant's communication. Inferences are simply deductions or conclusions which reason and common sense lead the jury to draw from the evidence received in the case. Circumstantial evidence is sufficient to prove

the defendant's mental state, direct evidence is not required. An expression of an intent to injure in the past may be circumstantial evidence of an intent to injure in the present or future.

A statement may qualify as a threat even if the defendant did not intend to carry out the threat, or did not have the ability to carry out the threat, and even if the defendant communicated the threat to someone other than the intended victim.

To send a communication in "interstate commerce" means to send it from a place in one state to a place in another state. The communication containing the threat can be handwritten, typed, oral, telephonic, email, text message, or any other form of electronic communication.

Instruction No. 11, On Or About

The instruction charges that the offenses alleged in each count were committed "on or about" a certain date. Although it is necessary for the government to prove beyond a reasonable doubt the offense was committed on a date reasonably near the date alleged in each count of the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

Instruction No. 12, Proof of Intent Or Knowledge; "Knowingly" Defined

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by a defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

Instruction No. 13, Prior Acts By the Defendant

You have heard evidence that the defendant engaged in communications related to judges other than the judge the indictment references in this case. You may consider this evidence only if you unanimously find it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find this evidence has been proved, you may then consider it to help you decide the defendant's intent, knowledge, and absence of mistake. You should give it the

weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed similar acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issue stated above.

Instruction No. 14, Reasonable Doubt

The prosecution must prove each and every essential element of an offense "beyond a reasonable doubt" for you to find the defendant guilty of that offense. If the prosecution fails to prove any essential element of an offense against the defendant beyond a reasonable doubt, then you must find the defendant not guilty of that offense.

A reasonable doubt may arise from the evidence produced by either the prosecution or the defense, keeping in mind that a defendant never has the burden or duty of calling any witnesses or producing any evidence. A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt,

therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon that proof in life's most important decisions. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

Instruction No. 15, Role of the Court

During his testimony, the defendant stated that he was facing fifteen years in prison. You are instructed that if the defendant is found guilty, the sentence to be imposed is my responsibility. Consequently, if convicted, the decision whether to impose a sentence that includes a term of confinement is solely up to the Court.

Ladies and gentlemen, we've been sitting about 15 or 20 minutes. You want to stand and stretch and then we'll hear from the government in their summation.

(Stretch break.)

MS. ALLYN: Thank you, Your Honor.

You don't know the 50 different ways I plan to kill her. Now think for a moment. If you are Lora Friedemann and Anne Rondoni Tavernier and you heard that from this defendant, but even louder, it's part of an angry rant about a specific judge, who is swearing in a barely controlled rage. On February 27th, 2018, when this defendant raged, You don't know the 50 different ways I plan to kill her, he had been seething in anger and hatred

towards Judge Wright for over a year. You saw for yourselves yesterday that this defendant still hates Judge Wright. And just like how --

THE COURTROOM DEPUTY: Counsel, could you turn the microphone towards you.

MS. ALLYN: And just like how this anger erupted in the courtroom yesterday, that is how that anger escalated and erupted in the phone call on February 27th, 2018. This defendant knows he's making a threat and he doesn't care. Remember how he testified yesterday? He knows he's scaring people. And what did he say? Fuck 'em.

Now, Judge Pratt just read to you some jury instructions, and I'm going to walk through some of these elements and jury instructions -- and these will be the same jury instructions you'll have back in the room with you -- but just to walk through and see how all the evidence proves beyond a reasonable doubt that this defendant is guilty of both counts.

Starting with Count One, the elements. The crime of threatening to murder a United States judge, as Judge Pratt has read, one, the defendant made a threat to murder a United States judge. You have all the evidence that Judge Wright is a United States judge for the District of Minnesota.

Two, the defendant did so with the intent to

retaliate against such Judge on account of the performance of the Judge's official duties.

You know, this wasn't a very long trial. It was only two days. And you heard over and over and over again how this defendant was mad and retaliating for what Judge Wright did in his civil lawsuit. She denied him a jury trial. Exhibit 21 that you will have in the jury room with you, Judge Wright's Order, Judge Wright's Order denying him the payment on those insurance applications of 100,000, she did this in her official duties. And he clearly is retaliating against her. His anger and threats are about this. I won't replay for you over and over again how many times he said this Judge screwed me out of my money, she stole my life, but that is his motive and your proof for his retaliation that what he is reacting to, what is he responding to when he threatens Judge Wright.

Now, the issue to talk about, the evidence to focus on that you have, is that this is a threat. And for Count One the instructions give you some things to understand that a threat for the purpose of Count One is a communication that a reasonable recipient who's familiar with the context of the communication would interpret as a threat. I'm going to go back to that in just a minute, but I also think it's important to point out what is not a threat as these instructions tell you.

A statement may qualify as a threat even if the defendant did not intend to carry it out or did not have the ability to carry out that threat. Seemed like maybe the trial defense was trying to make a point that defendant doesn't even have a car and couldn't even have gotten to Minnesota. Well, first off, that doesn't matter now you see in these instructions. And, second of all, he was doing everything to get a car and was getting money and did get a car.

What else? The threat, even if the defendant communicated the threat to someone other than the intended victim. So a couple things there. First off, Lora Friedemann and Anne Rondoni Tavernier, they are victims of having heard this threat. We're going to talk about that in a minute. But even if the victim's intended target is Judge Wright, this is still a threat under the law when it's made to those two lawyers, not just has to be made to Judge Wright.

So let's go back, though, to how this is a threat, it's communication that a reasonable recipient who's familiar with the context would interpret it as a threat of injury. The reasonable recipient, Anne Rondoni Tavernier and Lora Friedemann. Let's look at the context of this threat and their response as a reasonable recipient.

Context: This defendant was simply to be

receiving a preliminary legal consultation on a federal lawsuit. This defendant is talking to two attorneys he has never met before. He does know that they're private law firm attorneys who practice in federal court. He understands that federal court is a serious place where judges are to be respected. So this is not the defendant talking to some friend in a bar. No. He is talking to two people who are part of the justice system and he knows that.

The conversation starts calmly enough, but then this defendant gets an answer that he does not like. And what does this defendant do when he gets an answer he does not like? He threatens. And both attorneys, Lora Friedemann and Anne Rondoni Tavernier, told you that once they told him his civil lawsuit was not going to be viable, he switched to talking about Judge Wright and the previous lawsuit, and it's as if a switch flipped. Now he is yelling, he is swearing, he's talking about throwing chairs. And Lora Friedemann told you she has never experienced this kind of yelling before. His voice changed. He is getting very angry, they said, saying the Judge stacked the deck against him, the fucking Judge stole my life. They describe how the anger escalates. The anger is focused, and it is focused on Judge Wright. He's getting louder. He's talking faster. He's getting to barely controlled rage. And then Lora Friedemann says he's very clearly angry, he's out of

control when he says -- when he yells, You don't know the 50 different ways I plan to kill her. And how do they respond to hearing that threat, that level of anger, and that kind of language? They took it as a threat.

Lora Friedemann is an attorney for, you know, over 20 years. She testified that she's heard a lot. But when she heard this, she and her young associate, they locked eyes. They had a "holy shit" moment that you could almost just picture because they are stunned. They are shocked. They describe their feelings of hearing this threat very scary, distressing. Lora Friedemann testified that she was frightened and scared for Judge Wright. They had an emotional reaction. Their heart rate is speeding up. They needed to calm down afterwards. They couldn't focus. They couldn't sleep. They were concerned. They were concerned what if something happens to Judge Wright. They were concerned he would take action.

Anne Rondoni Tavernier testified about being thankful that Lora Friedemann was there, thankful she could take notes. That was important. She understood that even then. Thankful that she was not alone because she was personally scared. She testified about being glad it was over the phone, being glad that this defendant was in a different state, being glad even to have increased security in her office building. Anne Rondoni Tavernier testified

that she was concerned because he was clearly angry enough and he was making threats.

Lora Friedemann even called this a "death threat." They absolutely believed this was a present threat. Anne Rondoni Tavernier testified that defendant was still believing that this Judge stole his life, still believing the Judge stacked the deck against him. Lora Friedemann said because of his words, his tone, his demeanor that she viewed it as a present threat.

You viewed both these women testifying in this courtroom. You saw how careful and measured their words were. You saw they had an emotional response even still in testifying before you in this courtroom. These are not women that overreact. They were careful in trying to explain in detail what they witnessed, what they experienced, and what they felt, because these were also women that had to overcome a whole extra obstacle to even report this threat. And that's because if you understood, as lawyers they have this ethical obligation of an attorney-client confidentiality so that even if defendant is getting a consultation, they had to check first, is it okay for me to report this threat. And Lora Friedemann told you in her 23 years of experience she had never revealed a confidence before, but that this time that's how serious it was.

And Tiffany Sanders, remember her, she's from the Pro Se panel -- or Project. She was asked by Brett Kelley about these exceptions, and she testified about Rule 1.6(b)(6) that a lawyer may reveal this information if the lawyer reasonably believes the disclosure is necessary to prevent reasonably certain death or substantial bodily harm. That's an analysis these women had to make, and that is the analysis they made and what they concluded, to report this threat.

And look at everything that flowed from there once it's reported. Once Lora Friedemann gets the permission from an ethics adviser to report it, she reports it right away to Tiffany Sanders and they report it to another, Judge Davis, who makes sure Judge Wright knows. They report it to the marshals. The marshals begin investigating immediately. They're interviewing Lora Friedemann. They're trying to find the defendant. They finally find him in North Dakota. They interview him to get comfort to see if maybe this is nothing, and they are not confident.

You heard that March 14 recording when Deputy Seyfried tried to talk to this defendant, that still present rage and anger. No recanting. No contrition. And so the marshals have to continue to take it seriously to the point that they are tracking his phone to make sure he's not coming to Minnesota to hurt Judge Wright. And, in fact,

there is a time that he is coming back into Minnesota they have to mobilize, ready to charge and arrest him if they need to. He left before they needed to. But that is how seriously everybody took this threat.

So all of that, all that detail about the context of the threat and how it was taken, demonstrates to you the charges for Count One, but also for Count Two. You are going to be able to consider all that I just said with respect to Count Two, but let's look at the elements and some of the other elements for finding defendant guilty beyond a reasonable doubt for Count Two.

I know the Judge just read this to you. We're going to talk about the threat and understanding the threat part in a moment, but otherwise these elements containing a threat to injure another person, again, think of everything that we just talked about with respect to Lora Friedemann and Anne Rondoni Tavernier's testimony.

But, okay, element two, the communication was sent in interstate commerce. It's pretty simple, right? A phone call. These are a little bit like lawyer words to say what interstate commerce is. He is in North Dakota. They are in Minnesota. He uses a phone to send that threat. And you have the stipulation, Government Exhibit 30. It's as simple as that.

Element three. The defendant sent the

communication for the purpose of issuing a threat or with knowledge that the communication would be viewed as a threat. I sort of broke this down to make it clear, it's either/or or both. For the purpose of issuing a threat or with knowledge it would be viewed as a threat, now, these jury instructions help you understand that, what that means, what you can look at, and you will see that this is proved beyond a reasonable doubt.

In determining whether the defendant's communication was sent for the purpose of issuing a threat or with knowledge that the communication would be viewed as a threat, you may consider all the circumstances surrounding the making of the communication; for example, the language, specificity, and frequency of the threat; the context in which the threat was made; the relationship between the defendant and the threat recipient; the recipient's responses. This is everything that we just talked about. The recipients are Lora Friedemann and Anne Rondoni Tavernier. You understand the context in which that threat was made and all that demeanor and all that tone in which he screamed and yelled in barely controlled rage when he made that threat. But also look at any previous threats made by defendant.

Now, everything that happened on February 27th, 2018, that is enough to prove these charges beyond a

reasonable doubt, but you also do get to look at this bigger picture, all the circumstances, including prior threats.

Defense counsel maybe made it sound like just look at February 27th, just look at February 27th, but that's not the case, what these instructions are saying you can do. There were previous threats. There is a previous history.

Let's look at some of those past threats. For example, defendant writing a letter: I'm becoming a dangerous man. The defendant calling the clerk: I'm a walking bomb. He made these prior threats. And what's interesting and important about that is what he does. He didn't like something he heard from Judge Wright. She denied the jury trial. He sends a threat. Denied his claim for the insurance application, he calls and claims he's a bomb, gives a threat.

But what's even more interesting and more important for you to consider, what happens when he sends these other threats? He gets talked to by deputy marshals. And why is that important? This matters to you because he's on notice now. He has that knowledge. He is told you say these words, it's considered a threat. And that's part of what you're determining. Did defendant know these communications would be viewed as a threat? If you are told this many times by deputy U.S. marshals -- you have to have extra marshals in a courtroom when you are having a trial

because of the words that you are saying; when he had that January 2017 civil trial, you heard Deputy Hattervig testify, extra marshals, gets talked to. You clearly know then the power of your words and that you are threatening. So you certainly know by the time you use the word "kill" in relation to a federal judge it's going to be viewed as a threat.

Again, it wasn't a long trial. Go back if you want and listen to Exhibit 12, Exhibit 13, those prior interviews that Deputy Hattervig had with this defendant where he just tried every single way to warn the defendant, to tell him you are crossing the line.

What is even better evidence that this defendant knows that his words or what he said about Judge Wright was a threat? His own testimony, his own attitude, and his own testimony from yesterday. He does not care that he crosses the line and that he crossed the line. He admitted over and over again you were warned, you were told your words are threats and he said, I don't care. He's glad that people lose sleep. He's glad that they are scared. He admitted that he was warned. He was asked: You wanted them to be scared? And his response: Fuck 'em. So this defendant knows that people are taking his words as threats. You know it to this extent and you still say a threat, like I plan to kill a federal judge, you're intending it as a threat.

What does this attitude of defendant's testimony also show you? Last line here: Whether you believe the person making the statement was serious, as distinguished from mere idle or careless talk, exaggeration, or something said in a joking manner. I mean, there has been nothing the defendant has ever said for you to think that anything that he is doing or that threat on February 27th, 2018 was idle, careless. You could feel it from his own testimony. You could feel that anger. There's nothing joking about this.

Let's talk about his credibility in testifying. This defendant testified before you yesterday and in direct testimony he claimed to you that he never made even one of the single threats or comments that the two lawyers testified to you about.

Exhibit 15, you've seen it, the notes. Defendant complained why isn't this recorded? How about you record it? Well, it is recorded. It's recorded right there verbatim in real-time. You heard Lora Friedemann and Anne Rondoni Tavernier testify. You heard everything they had to go through to report this threat, to come before you to testify, how emotional they got on the stand.

So for you to believe that defendant did not say the threat "You don't know the 50 different ways I planned to kill her" as written down by Lora Friedemann, for you to believe him means you have to think that those women lied,

that they lied on the stand, and that is not reasonable, that Lora Friedemann would come in here, very careful person, lie to you under oath, risk her career for this defendant.

What is reasonable is that it's this defendant who lied, claimed he didn't make that threat because he has a motive to lie. He knows this time he crossed the line.

Look even at how he testified when talking about the March 14th interview with Deputy Seyfried after the threat. This defendant claimed he didn't make a threatening statement, never made it. But what was his reaction when the deputy showed up at his door in North Dakota? Immediate, complete anger. He never even gave them a chance to say why they were there, because he knew why they were there. He knew why they were there because he made that threat. And he knows now after everything he has been warned that this threat -- he said the word "kill" -- this threat crossed the line.

This defendant testified before you, sat there in defiance thinking he can say anything he wants to and fuck anyone who's scared by his words, but you cannot say anything you want to. Judge Pratt has instructed you threats are crimes. This was a threat. And the fear it caused is not okay. These threats are not okay in a civilized society. You get to say horrible, disgusting

things even. That's not against the law. But a threat is against the law.

When defendant said, You don't know the 50 different ways I plan to kill Judge Wright by screaming and yelling with fury to those lawyers and all the fear that that caused, the fear for Judge Wright, the fear for the lawyers themselves, that crossed the line because under the law we don't get to use words that cause people to fear violence. And all the disruption, all of the harm, all that damage that that fear causes, you don't get to say fuck 'em when you scare people with your words.

Defendant also testified in defiance: Well, these words are a threat? Then arrest me. Well, we did, and he's charged here now before you. And you have all the evidence you need to find this defendant guilty beyond a reasonable doubt of both counts.

Thank you.

THE COURT: Mr. Kelley, you may proceed.

MR. KELLEY: Thank you, Your Honor. Good morning, ladies and gentlemen.

The Judge gave you some instructions. About 45 minutes ago he went through them. I'm just going to highlight a few of the major points, a few of some of the constitutional guarantees this country affords criminal defendants in this country.

The first one is a presumption of innocence. Judge Pratt read to you what the presumption of innocence is. You must presume the defendant to be innocent. The defendant is not on trial for any act or any conduct that is not specifically charged in the indictment. When the Judge read Counts One and Two to you, it said the defendant is charged for whatever happened on or about February 27th, 2018. He is not charged with anything that happened before February 27th or after February 27th. It is only what happened on February 27th, 2018. So that is what we are dealing with here.

And the government must prove beyond a reasonable doubt each and every element of Count One and Count Two. So when you are looking at Count One and you start picking apart the words, it's kind of dense, if you think any of those words in there has not been proved beyond a reasonable doubt, then that element has not been proved up. He is innocent of that charge. So I want you to carefully look at each one of those counts and see were they proved beyond a reasonable doubt.

Lastly, presumption of innocence guarantees that the burden of proof remains on the government. It is not on Mr. Ivers.

Let's talk about a threat. I think the word "threat" was probably said 500 times during this trial.

Okay? And the Judge instructed you that what these witnesses testified to were not legal definitions of a threat. When they say "threat," that does not mean a crime has been committed. And you heard Deputy Seyfried, when I was talking to him, say that they use "threat" as a term of art. It means that there has been an alleged threat and they need to investigate it. Deputy Seyfried said you have to go out and check is it credible, does it have no bite.

So the fact all these witnesses were using "threat" does not mean that a crime has been committed. You need to use your common sense and reason to determine whether or not you think anything Mr. Ivers may have said was a threat. You are reasonable people. The Judge said I implore you to use your reason and common sense when you deliberate.

So what is a threat? What do reasonable people think is a threat? When you threaten somebody, it must be a present or immediate intent to do something. It must be I'm going to punch you right now. Okay? Or it must be something in the future. Next week I'm going to punch my boss in the face. That is future intent.

What is not a threat? Common sense, something that happened in the past, past conduct, past statements, completed acts. Things that happen in the past do not express the present intent to immediately do something or

future intent. So, like I said, I punched him. That is not a threat. It's a statement about something that happened in the past. I was going to punch him, again, talking about something that happened in the past, not a threat. I thought about punching him, not a threat. Thought about it, that's in the past, does not express present or future intent to do anything. I had imagined punching him. Again, thoughts about something in the past, that is not a threat. People say those things. Common sense dictates that is not a threat.

Reasonable doubt. So the Judge read the instruction and he asked you to apply reason and common sense. That's why I keep saying it. Reasonable doubt is a very dense subject, and what it really means is would a reasonable person hesitate to act based on the evidence before you. And the government must produce proof of such convincing character that a reasonable person would not hesitate to rely and act upon that proof in life's most important decisions, life's most important decisions.

So when you deliberate, I ask you to treat Mr. Ivers' case like one of the most important decisions in your life. And if you would hesitate to act in that decision, then you should find him not guilty. That's what the presumption of innocence is. That's what the burden of proof is. That's what reasonable doubt is.

So we attorneys like to use hypotheticals, analogies, things like that to explain dense subjects -- reasonable doubt, pretty dense. I think we went over it. I think you all understand it. But I tried to think of something, some analogy that would apply to the facts here. So I want you to imagine going to the doctor and getting an X-ray of your head. It shows a large brain tumor. Radiologist takes a look at the X-ray, writes down "not cancerous." Tells the surgeon whatever the radiologist says. The surgeon hears "cancerous." They sound kind of similar. Surgeon goes off of that, schedules surgery. Brain surgery is very risky. Everybody understands that. It could be life-threatening. You're going to be under the knife for awhile. X-ray is missing. You must rely on the radiologist's memory.

Radiologist now remembers that there was a very large tumor, I remember seeing that on the X-ray, but I can't really remember if it was cancerous or not cancerous. I wrote down "not cancerous." Would you rely on the radiologist's memory in making an important decision about whether to have brain surgery? Do you hesitate to act? Absolutely. You get a second opinion. You do not go under the knife there. You need to figure out what happened.

Here the government wants you to convict Mr. Ivers based on the word of Ms. Friedemann and Ms. Rondoni

Tavernier. Like the missing X-ray, we don't have a recording. It's unfortunate. I'd love to play a recording of that for you. We don't have one. So we have to rely on their memory. That's all we have, the memory of those two witnesses and Mr. Ivers. Their account of what was said on February 27th is all we're dealing with here.

One phone call is what Mr. Scott told you at the beginning of the case. Three witnesses. There is no recording. February 27th, 2018. And really it boils down to one sentence. And what we've heard during this trial is we don't know what was said. Ms. Friedemann said it could've been had imagined, he had imagined 50 different ways to kill her. Planned, we heard that a bunch of times. Planned, heard her say that. Imagined. You heard Ms. Rondoni Tavernier say thought of, planned again. She thinks maybe if Ms. Friedemann wrote down planned, it must be planned; I'm not sure. You heard Ms. Friedemann testify again had imagined. Ms. Rondoni Tavernier something like thought of, that's what she said in August. Planned. Heard them say plan occasionally. I think I told Deputy Wooton plan, can't remember. It's difficult to discern the difference between plan and planned. Ms. Rondoni Tavernier didn't take notes. Look at how many different versions of this important phrase that the government wants you to convict Mr. Ivers on. We don't know what was said. But you

know what this shows? Best guess of their memory, every single one of these is past tense -- had imagined, he'd imagined, planned. Every single one of them is talking about something that happened in the past. None of them expresses a present or future intent to do anything. It's not Mr. Ivers saying I'm planning to kill Judge Wright. I have a plan. He's not saying that. He's talking about the Judge's decision from eight months prior in June of 2017. He's talking about how that made him feel. And to the best of Ms. Rondoni Tavernier and Friedemann's recollection, this is what they think he might have said. We don't really know. Do you have doubts about what was said? If you don't doubt, they're all past tense.

Let's talk about the government's star witness, Ms. Friedemann. Two days ago and then yesterday in the morning, you heard Mr. Rank examine Ms. Friedemann. So this is Mr. Rank questioning Ms. Friedemann. Ms. Friedemann was asked: What were some of the things that Mr. Ivers said during the call that you can recall?

Ms. Friedemann. Highlighted. And then the concluding comment he made was that he had imagined 50 different ways he planned to kill her. That's different than a lot of the things you have heard her say -- had imagined, planned, past tense. But, again, it's not what she wrote down in her notes exactly. She doesn't really

remember.

Later she was asked and he said, You don't know the 50 different ways I plan to kill her, present tense? She said, Correct. Conflicts with what she just testified to.

Then, finally, she's asked, you know, did at some point in time in that first call, did you tell her that the threat -- so this is her talking about the threat again. It's covered up. What's important here is that Mr. Ivers -- she thinks Mr. Ivers said he'd imagined 50 different ways he planned to kill Judge Wright. Okay. So, again, he'd imagined, planned, past tense. He's not expressing any present plan to do anything. He's not talking about a future plan. Please use your common sense when you are looking at that. This is what she testified to here.

Okay. The next time -- or the previous time that Ms. Friedemann was under oath was June 18, 2018, sitting right here again. What did she say then? She was asked by Ms. Allyn on direct examination -- again, this is not me asking questions, this is the government -- what were the threats? He said he had imagined 50 ways to kill her, past tense. She doesn't say planned. That's what she wrote down in her notes. She said, he had imagined.

Ms. Allyn asked did he say anything about a plan to kill her? That's present, future intent. No. No, he

didn't.

What did you tell the marshal? I told the marshal you don't know the 50 different ways I plan to kill her, present tense. Okay? That's going to be important later when we talk about how the investigation came together and why Mr. Ivers was indicted in the first place. She told the marshals something else.

But what we have here is a bunch of conflicting statements. Almost all of them are past tense. They're statements about past thoughts, past conduct, stuff like that. The only time you hear one that is a present or future intent is her mistaken comment to the marshals.

Then we have Ms. Friedemann's notes. We've seen those a bunch of times. What did she write down? "Planned." She has testified under oath he had imagined, had imagined, he had planned, a bunch of things. This is what she wrote down. You heard her testify this is what I wrote down verbatim, contemporaneously, "planned." We'll look at the notes again and talk about the context of all the other statements all in past tense. This is consistent with those statements. He's talking about how upset he was months ago about rulings that happened in the past. He is not talking about a future plan or any present plan.

When you're deliberating and thinking about one of life's most important decisions, would you rely on

Ms. Friedemann's memory and her testimony? She just doesn't know. She has made some mistakes. Most of the statements she said are past tense. She doesn't really know what she said. Would you hesitate to act? Yes.

Okay. Ms. Rondoni Tavernier. During trial here, she said Mr. Ivers said, You don't know the 50 different ways I thought of killing her, again, past tense. That's what she remembers. That's what she testified to, "thought of." That's not something he's presently thinking of doing. That's not something he's planning on doing in the future. The context of the conversation, "thought of" is something he was angry about in the past, might still be angry, but this statement, about the past.

Okay. She also said it could've been planned. She said, I trust Ms. Friedemann's notes. If she said planned, it must have been planned, past tense. She also said she didn't really recall. She couldn't really remember.

Earlier in August, she thought it was something like thought of, again, past tense. She also said she couldn't really remember what he said. It's five months after the fact. She didn't take notes. What are we left with?

July she sat down with Ms. Allyn and Deputy Trinh and she told them it was plan. Conflicting statement, it's

a long time after, and she doesn't really remember what was said. Would you rely on her memory? Would you hesitate to act based on her testimony? Yes.

Okay. Let's examine these notes. So you have seen them a bunch of times. I went over the notes with the witnesses, with Ms. Friedemann. Kind of combative when Ms. Friedemann and I were discussing this, but she agreed that the verb tense on every single one of these is past tense or is consistent, rather; so consistently past tense.

This fucking judge stole my life from me. He's talking about the Judge's decision which dismissed his lawsuit. That happened in the past. I had overwhelming evidence. He's talking about the fact that he thought he should have won the case. He came to court, doesn't really know what he's doing. He thought he could win it. Had evidence, he is talking about something in the evidence. The next comment: The Judge stacked the deck to make sure I lost the case. He's talking about decisions Judge Wright made and then he lost the case, again, in the past. This is providing context for everything that comes next.

Didn't read the fine print and missed the 30 days to seek a new trial. Common sense that's past tense. Clearly happened in the past. It's done. Completed act.

Okay. And she's lucky, I was going to throw some chairs. Do you remember me talking about this with one of

the witnesses? He asked for a hearing on a motion for a new trial. He missed the deadline. He screwed up. He never got that hearing. So the fact that he might have thrown some chairs at a hearing that never even happened, I'm not even sure that's a statement about past conduct. It's just weird. But it's about something that did not happen in the past.

And then, finally, Ms. Friedemann writes down: "You don't know the 50 different ways I planned to kill her," "planned," past tense, consistent with everything else he's talking about. He is talking about things that happened in the past. He's not talking about what he is planning to do now. He's not talking about what's going to happen in the future. He's talking about stuff in the past, and those are not threats.

There is no immediate intent in any of the statements he made on February 27, 2018. There's no future intent. There are no threats.

One of the other elements in Count One is that you need to -- or the government, rather, needs to prove beyond a reasonable doubt that Mr. Ivers intended whatever statements he made to be retaliation against Judge Wright in her official capacity.

So we know that attorneys and clients have confidential conversations and the duty of confidentiality

applies to those. I'll talk about the exception and other things that the government just covered in a minute. But this duty of confidentiality is like the doctor-patient privilege. You go to see your doctor, you don't expect the doctor to disclose what you tell them. There might be some exception that allows them to say, you know what, he was suicidal, I've got to tell the authorities. But you still expect them to keep that information confidential. That is a reasonable thing for a client to expect. Same thing with priest-penitent. You go to see your minister. You say something to them in confidence. You'd expect them to keep that confidential.

And you heard Tiffany Sanders and Ms. Rondoni Tavernier testify that, yes, this would have applied to the conversation with Mr. Ivers. Okay? So then he would have reasonably expected, as a prospective client, like any other person, that my attorney is not going to disclose anything I say.

So that's the general rule: Attorneys may not reveal information. Okay? If an exception applied, which is a whole different question, there's not room for improvement here, but if an exception applied, Mr. Ivers wouldn't know about that. Lay people don't know there are exceptions and what they are. He goes under the general rule that average people know: Reasonable people expect

that their attorneys will keep information you say to them confidential. So why is that important? So whatever was said to Ms. Friedemann and Ms. Rondoni Tavernier, Mr. Ivers would expect, like any of us, that they wouldn't disclose that. The fact that Ms. Friedemann went to her attorney, they spent 24 hours talking about it and said, you know what, we may -- we are permitted to disclose this we think, we are not required to, we can, Mr. Ivers would have no idea about that. He expected that they would keep that information confidential. That's important because what he said to them should have stayed in that conversation. He never expected it to go outside. He didn't expect it to ever reach Judge Wright. He didn't tell them to disclose that information. That was very clear. I asked Ms. Rondoni Tavernier and Friedemann did he say tell anybody else? No. He expected it to stay in that conversation.

There was no threat. We went over that. There was also no intent to retaliate. He never meant that statement to leave that room metaphorically. I suppose he is in North Dakota. They're in Minneapolis. But he never expected those statements to leave that phone call.

One of the elephants in the room is Mr. Ivers is not a likeable guy. I'm sure many of you don't like him. Some probably have pretty strong feelings about him. He says awful things, offensive things, very vulgar things,

racist things. It's hard to like him. He yells. He screams. He gets angry. You heard the audio. You heard him in court yesterday. None of that is illegal. Those are not crimes. His character is not on trial.

What we're here to determine is whether or not one sentence that he said on February 27th, 2018 carried a plan to commit a crime immediately or something in the future. It's not what was said. He's not on trial.

So you may not like him. You may want to take him off the streets like the government wants you to, but that's not why he's on trial. That is not your job. And you cannot convict him just because you don't like him.

So the instructions also tell you you can consider the context of what was said, what was happening. All right? We were here for several days. The government spent most of the time talking about what didn't happen on February 27th.

So I'm going to quickly breeze through the first lawsuit because I know we've gone over that. I feel like we were going through a civil trial. But it was filed March of 2015. Gets removed to federal court.

October 14, 2016, Judge Wright issues this text-only order you saw saying, Mr. Ivers, you missed the deadline to demand a jury trial. Even though I have the power to grant you a jury trial, I'm denying it.

October 31st, 2016, Mr. Ivers sends a letter to Judge Wright who received it a few days later. He says, I demand an immediate trial. He wanted a jury trial. I am in dire fucking straits. He was broke. You heard it. He was living out of his truck, and that's true. I am becoming a dangerous person. Based largely on that last statement, Deputy Hattervig has to investigate. That's reasonable. That's his job. He's doing his job. So he goes to investigate that.

So this is January 4th, 2017. Deputy Hattervig comes to this courthouse, meets Mr. Ivers at security, and he spends about 40 minutes with him. And his purpose for being there was really to determine whether or not Mr. Ivers was serious, whether or not the comment "I'm becoming a dangerous person" meant he was actually a threat. And he asked him point blank, you know, when we get stuff like that and we hear I'm becoming a dangerous person, I'm in dire fucking straits, we need to investigate that. That's fine. But you didn't mean anything like that, did you? Mr. Ivers responds to Deputy Hattervig: No.

And in his report, which there's no reason for Deputy Hattervig to say anything that isn't the truth in his report -- Mr. Ivers isn't going to see it, writes it for the marshals -- writes Mr. Ivers was polite and cooperative. He testified to that. So this is January 4th.

We also heard Deputy Hattervig go through the testimony -- or, rather, not the testimony, the actual hearing or recording from January 4th and they talked a lot about Mr. Ivers processing his emotions. These guys dragged me through the coals. He's talking about the case. The lawsuit has been dragged on for several years. That's what he's talking about. Okay.

Then at the bottom you hear Mr. Ivers tell Deputy Hattervig: The only reason why I'm sane and not in a mental institution is because I vented. Deputy Hattervig: Yes. He understood he was just venting. Okay.

So what happens after January 4th? They keep the investigation open. No threats made there. He's not charged for anything that happened there.

Okay. Deputy Hattervig tries to offer Mr. Ivers his card. Hey, here's my phone number. Mr. Ivers: I'm not sure why I would need it. Because Deputy Hattervig understood kind of what was going on in Bob Ivers' head. He says, If you don't want to internalize stuff and you need to get it out, it's better if you call me. The upside of venting to me is it doesn't bother me if you yell at me. It's not a crime. But Deputy Hattervig understood him. He vents when he's processing his emotions.

Okay. January 9th and 10th, that's the trial. Deputy Hattervig sits through the entire thing, describes

Mr. Ivers' behavior as mildly inappropriate, says that he maintained friendly rapport, he was cooperative. Mr. Ivers reiterated that he was just venting. He said those words to Deputy Hattervig, and that's what you heard him testify to, again, just venting. He understood him.

So let's jump to the trial. It happens in front of Judge Wright. It's a bench trial. The Order comes out six months later, dismisses Mr. Ivers' case.

A couple months later, that's when Mr. Ivers sends some letters to the court, and we saw those. Okay? He asks -- you saw them. There is a lot of stuff going on in there -- highlighting, red underlining, writing on the side. He is annotating all these court documents. He wants Judge Tunheim, some of the other judges, Judge Thorson, he wants them to overrule Judge Wright. He thinks she was wrong. He writes "pay attention" in red marker on one of the envelopes, and then he is underlining those things in the document in red because he wants them to pay attention to it. He's not an attorney. He doesn't operate a computer. This is how he does things. He writes: Judge Wright is a corrupt judge. It's not illegal. It's very disrespectful. It's not illegal. He says, I'm going to contact the Attorney General. I'm not sure if he did. I don't think we heard that testimony. But nothing illegal about that. He is not charged for anything in those letters.

At the same time he calls Heather Arent-Zachary. That is Judge Tunheim, the Chief Judge's Clerk. She was one of the first witnesses in the trial. And this is when he says, you know, he is talking about a motion for a new trial in a hearing and overruling Judge Wright's Order. He says, I'm a walking bomb, something like that. Right? That could be alarming. What did Heather Arent-Zachary say? The Clerk said -- this is an email to Judge Wright's Clerk: Just returned a call to Bob Ivers and he described himself as a walking bomb, said he's crazy angry and doesn't know how to deal about it, processing his emotions, very upset with Judge Wright's rulings in his case. He didn't make any direct threats to anyone, but I thought I would pass on my conversation. She didn't even consider them direct threats when she passed on this email. But she did tell the marshals, and it is their job to investigate things like that. It's reasonable. It's her job.

So based on that statement, this phone call to Heather Arent-Zachary, Judge Tunheim's Clerk, Deputy Hattervig and Deputy Wooton go to visit Bob Ivers in Minnetonka. We heard that testimony. You heard the recording from September 1st. The purpose was to investigate the "walking bomb" comment and determine whether or not he was serious about that -- it's a reasonable thing to do -- and to tell him, tell Bob Ivers, stop the

correspondence with the court, stop sending these letters to the Court, stop calling people. You heard Deputy Hattervig testify that was one of their goals.

You also heard Deputy Hattervig again talking to Bob Ivers about venting. Mr. Ivers: I have to process it. I have to process it. Again, he's talking about his emotions, how he deals with things. He's a complicated guy. Mr. Ivers, toward the end of the recording, characterizing the letters that he wrote to Judge Tunheim and Judge Thorson: I wrote the Chief Judge a letter, which helped me vent --

Mr. Wooton: Yeah.

-- by telling the Chief Judge I'm hurt. Processing his emotions, not a crime, and he is not charged with it.

Deputy Hattervig says to him: It's fine to be hot, but you can't hurt anybody. That was one of their goals in going out there. Are you serious? Are you going to hurt somebody? What did Mr. Ivers say back to them? I never -- I'm not going to hurt anybody. He's not charged with anything that happened on September 1st. And we know that he stopped all correspondence with the court after September 1st. The deputies achieved their goal. You heard that from Ms. Bender, Judge Wright's Clerk. I asked her: Did he send any more mail? Did he send any emails? Did he

make any calls to Judge Wright's chambers? No, nothing after September 1st. You heard that from Judge Tunheim's Clerk: Nothing, correspondence stopped. You heard that from Deputy Hattervig; he confirmed it. You heard that from Deputy Wooton. They all confirmed no correspondence after the end of August, after they visited him on September 1st and said stop it, he didn't. You know what, he didn't apologize. He wasn't apologetic, and that bothered them a lit bit. Investigation continued. Right? He's not charged with anything.

Okay. So we skip to November 2017. Mr. Ivers files his second lawsuit assigned to Magistrate Schultz. You heard that confusing thing. Why they assign Judge Schiltz with Magistrate Schultz, I don't know.

December 2017, Mr. Ivers moves in with his sister, Janet, because he's broke. He has nowhere to live. It's in West Fargo four hours from here, four and a half according to Deputy Wooton. And life is good for the first time in a very long time. He's got a roof over his head. He has a warm bed. He has hot food. Army guy, those things are important. He's got a daily routine. He gets up in the morning. He sleeps in, we heard that, pretty late, I guess. He sleeps in. He reads the paper front to back, watches the news a lot, a lot of cable news. And then he works on his Pepsi project. Okay? I mean, whatever you think of his

Pepsi project, this is consuming his time. He's drawing up posters. He has this plan for a new can he wants to launch with Pepsi. He wants to talk to them about it. He actually bought stock in Pepsi. You heard that from his sister. They went out and bought it. They were planning on going to the shareholders' meeting and meeting with Pepsi so Bob could tell them his thoughts, show them the posters, the things he is spending his time on while he was with his sister.

He's not talking about the insurance case. There might have been periods where Janet had to go to work, but they are not talking about it. They keep things private. If this is so important, as the government claims it is consuming his time and thoughts, don't you think he would have talked about how angry he was at this case at some point? He doesn't. And he doesn't talk about Judge Wright. He's not sending any correspondence to the court. He's not calling. He's living with his sister in West Fargo. Things are good.

February 2018, okay, this is when the case gets assigned -- the second lawsuit gets assigned to the Pro Se Project. Tiffany Sanders emails Ms. Rondoni Tavernier: Would you take Mr. Ivers' case? Mr. Ivers didn't ask for this, but it happens. They agree to consult with him.

February 27th, 2018, the only day that really

matters for this case. This is the only thing he is charged with, is what was said on February 27th, 2018 during a short phone call, 30 minutes.

Ms. Rondoni Tavernier, Ms. Friedemann call Mr. Ivers and they deliver the bad news. You heard it, res judicata, very dense legal term we were talking about yesterday. Hard to understand. Basically means if you brought a lawsuit once, you cannot bring a second lawsuit based on the exact same facts and circumstances. That's what he had done. They told him you're going to lose. Then Ms. Rondoni Tavernier testified that the conversation organically shifted to the first case with Judge Wright.

So Mr. Ivers had been living with his sister. He's not thinking about the case. He's not talking about Judge Wright. But it comes up in this conversation. That upsets him, re-opens an old wound. You heard Ms. Rondoni Tavernier say that he started discussing Mr. Tallman, his friend that had died, that he believed he was entitled to the life insurance policy for. Explained that he was down on his luck. He wanted a jury trial; he didn't get that. He missed a deadline to file a motion for a new trial. Didn't understand how he could lose the case. These are things he is discussing with Ms. Rondoni Tavernier and Ms. Friedemann, natural for him to do that.

He is upset. He is yelling. He is swearing.

Okay, that's startling, not a crime, not a threat to yell, swear, do anything like that. And that's how Mr. Ivers is. You heard him yesterday. He yells. He swears. He gets upset.

Toward the end of the call, Ms. Friedemann writes down this: This fucking Judge stole my life. I had overwhelming evidence. Judge stacked the deck. Didn't read the fine print. Missed the 30 days. I was going to throw some chairs. And, lastly, the sentence that matters: "You don't know the 50 different ways I planned," past tense, "to kill her." That's what she writes down.

Right after that Ms. Rondoni Tavernier gets a call back from Mr. Ivers, clarifies the legal advice about the second lawsuit. It's a short call. I think she said it was under five minutes, unremarkable. Consider the context of, oh, my God, death threat happened, and then a phone call a few minutes later, unremarkable. She never hears from Mr. Ivers again. He doesn't contact her or Ms. Friedemann ever again. That was the last thing. They gave him his legal advice. He went his separate way. He's in West Fargo, goes back to his daily routine.

It was important for the marshals -- I mean, it's their job -- but important for them to figure out what Mr. Ivers meant every time he sent something disrespectful, alarming to the Court. It was very important for them to

determine what he meant, whether or not he was serious, whether or not he was venting.

Ms. Rondoni Tavernier and Ms. Friedemann didn't ask him any questions. They didn't ask what do you mean by that? Are you serious? They don't tell him don't do that, don't say any of those things. They are alarmed. They don't know what to say. They just let him go. He just, you know, rants for a bit and then he stops. Okay? And then they conclude the call, tell him can't represent you anymore, sorry about your case.

Ms. Friedemann does not report it to the authorities. Okay. Instead, she goes to legal counsel. They figure out, well, can we turn this over? Are we permitted to do this? So they wait over 24 hours. You know, if they really thought there was a serious threat, is it reasonable to wait 24 hours, to go to your ethics attorney first instead of calling the authorities?

So she calls Tiffany Sanders. She's not sure what she told Tiffany Sanders. We heard a bunch of different things. So this is what Ms. Friedemann testified about what she said to Tiffany Sanders: I don't remember if I reported them verbatim to Ms. Sanders, but I said that a threat had been made to Judge Wright. That's different than the words he used. Had she said the actual words she wrote down, maybe they would've reacted differently. Then she also

testified -- this is Ms. Friedemann -- I summarized the notes as a threat, a death threat against Judge Wright. That is a stark leap from what he actually said on that phone call. So if we think you don't know the 50 different ways I planned, past tense, to kill her, stark difference from calling somebody and just saying a death threat has been made against somebody's life. Okay? People react differently to that. That's what she said, "death threat." Death threat against Judge Wright, that's what she thinks she said. She's not sure.

Okay. So then we know that Ms. Sanders reports to Judge Davis' chambers. She calls them, gets a call back from Judge Davis. She passes along this "death threat." That's alarming.

Judge Davis called Deputy Wooton. He passes along the message from Ms. Sanders, "death threat." That's very, very serious.

Deputy Wooton calls Ms. Friedemann. Ms. Friedemann claims she told Deputy Wooton "planned," past tense, because that's what she wrote in her notes. You heard Deputy Wooton testify. You get to determine his credibility and Ms. Friedemann's. Maybe there was just -- you know, it's been a long time. Maybe she just doesn't remember. But Deputy Wooton believes she said "plan to kill." That is a future intent statement, "plan to kill."

That is much more alarming than what he actually may have said. He may have said he had imagined, he'd imagined, planned, thought of, all those statements. If they would have said those, that's different than "plan to kill." So he is going off the idea that Mr. Ivers has a "plan to kill." That's what he writes in his report. So naturally he needed to investigate it.

Just like every other time Bob Ivers said something, they go investigate it, check it out, determine is it credible, is it not. But the investigation is based solely on this misrepresentation "plan to kill." They think there is a plan to kill out there. They think there's a death threat. That's the only statement they have at this time, the only one, this one sentence.

So we jump to March 14, 2018. Finally, a couple weeks later, the marshals go out and visit him. You heard this recording. Deputy Seyfried and Deputy Wickenheiser, they go out to West Fargo. Purpose? To assess a threat. That's their job. And you heard from Deputy Seyfried: That's not a legal term, that's something we use, it's an alleged threat, not necessarily a crime. You need to determine whether it's credible or it has no bite.

They also said they were looking for an apology. You're not going to get an apology for Bob Ivers. He doesn't apologize for the things he says. He just doesn't

do that; doesn't have to. It would be nice, doesn't do it.

They get there. They wake him up. You heard the audio. He is loud, screaming, says some awful things. Deputy Seyfried's conclusion at the end of it -- is it credible, no bite -- could go either way. That's what he testified to in court. He wasn't sure.

So he reports back to Deputy Wooton; said, hey, investigation continues. He is not charged with anything he said on March 14th. They are just following up on the investigation. That's their job. They think there is a plan to kill out there because Ms. Friedemann told them there was.

March 16th, Deputy Wooton and Mr. Rank interview Ms. Friedemann. They confirm that Ms. Friedemann said "planned to kill." Okay? This is it. Confirmed during the phone call that what you wrote down was verbatim and contemporaneously. Yes. When I spoke to the marshal on both occasions, I had my notes in front of me and I read them verbatim because I knew it was important. They confirmed she said "planned to kill." She agrees with that. Ms. Friedemann in court says she said "planned." The authorities are operating off of "plan to kill," future.

So then Deputy Wooton obtains a search warrant to monitor or tap -- he described it differently, I don't know all the legal terms -- but to monitor Mr. Ivers'

whereabouts. Bob Ivers has no idea they are doing this, so he has no idea to hide what he is doing. He is also not restricted from traveling anywhere. There is no movement between March 16 when they get the search warrant and April 3rd because Bob doesn't have a car. He's just in this daily routine in West Fargo with his sister, reading the paper, working on his Pepsi project, watching the news, going to movies, cooking. That's what he's doing. No correspondence with Judge Wright or the court in this time frame.

Then we jump to April 3rd. This is an important date. Mr. Ivers decides to take a bus trip. He doesn't have a car. He grew up in the west metro here. He comes back here, travels down 94, goes to St. Louis Park/Hopkins area because that's where he lived. That's where his stuff is. He is going to get some of his Pepsi materials. He also needs money. Natural for him to do that. That's where he lives.

Deputy Wooton gets a cell phone ping tracking Mr. Ivers coming to the city. Right? He thinks that Mr. Ivers is going to Judge Wright's house. And as we heard yesterday, nobody knows where Judge Wright lives. She lives somewhere out east, don't know if it's Woodbury, don't know if it's 25 miles away. I have no idea, neither does Bob Ivers. But when Deputy Wooton seems him traveling, he overreacts. He runs into -- well, I asked that question and

it turns out he called them, but he calls Mr. Rank immediately on the phone. They agree to get an arrest warrant for Bob Ivers because they thought he was coming down to visit Judge Wright. That's when they determine it. He's traveling down in a bus and they go that's it, that's the straw that broke the camel's back. Turns out that wasn't true.

This is what he was doing: He was getting stuff from where he lived. He went to his brother's house, jumped on a bicycle, got some stuff, jumped back on the bus. And we know he returned. There was a snowstorm. He got stuck in Alexandria overnight. And his sister picked him up at 4:00 a.m. from wherever the bus dropped him off in West Fargo. That's what Deputy Wooton testified to. That was important.

Deputy Wooton made a mistake. He was wrong. And that was what they based the decision to go arrest Bob Ivers on. They didn't have anything on March 14th that they wanted to arrest him for, didn't have anything before that. It was this, the mistaken belief that he went on a bus and was heading down to see Judge Wright.

So April 17th is grand jury testimony. Deputy Wooton is the only witness that testifies there. He doesn't tell them about the bus trip, but he says, Ms. Friedemann told me there is a "plan to kill," present tense. That's

what he tells the grand jury. He's got a plan. And they return an indictment. Bad mistake. He's operating off the wrong words from Ms. Friedemann.

April 20th he's arrested in West Fargo. Okay?

Go ahead a few weeks. Deputy Wooton and Ms. Allyn this time interview Ms. Friedemann. This is the third interview Ms. Friedemann had given to the government. They confirm again that Mr. Ivers said "plan to kill." She agrees, present tense, future intent. This is what they are operating off of. So the way the government is acting is actually kind of reasonable. They think there's some future plan out there.

Friedemann testified here in court, no, I told them "planned," so they must be wrong. Not only Deputy Wooton, but Mr. Rank and Ms. Allyn, they must be wrong.

End of May 2018, we ask to talk to Ms. Friedemann. We ask, hey, we'd like to know what happened during this phone call. We get a waiver from Mr. Ivers saying you can talk to us and so can Ms. Rondoni Tavernier. Please tell us what happened. You're not supposed to tell the government, but please tell us. She refuses. We can't tell what was said. We don't get her notes. If we had her notes, maybe we could've convinced the government, hey, he said "planned." Let's talk about this.

June 18th, it's when she comes here and testifies

he had "imagined." She also testifies that she told Deputy Wooton "plan to kill," another conflicting statement. She is having trouble remembering. That's reasonable. She can't remember what was said.

Okay. Early July 2018, that's when we learned from Ms. Rondoni Tavernier she is not going to interview with us either. She won't talk to us about what happened.

Okay. This is from June 18th. We've seen this before, but this is what Ms. Friedemann testified: To. Mr. Ivers said he had imagined 50 different ways. Did he say anything about a plan to kill? No. And then what did you tell the marshals? I told them plan to kill. Okay.

August 2018, this is the first time that anybody sees Ms. Friedemann's notes. She turns them over to the government first. It's five months too late. Five months too late. The notes say "planned," past tense. First time the government has seen it. They realize they made a mistake. It changes the game.

At the same time, Ms. Rondoni Tavernier changes her story. She interviews with the marshals and she tells Deputy Trinh "plan to kill," that's what I remember, present tense, future intent.

Now in court she claims he said something like "thought of," not really sure what he said, turned to Ms. Friedemann's notes.

August 21st, because of this change in verbiage, now that they know it was a past statement about past conduct, the government runs back to the grand jury and tells them that. And there was some confusing testimony about a pin communication. We're not sure what convinced the grand jury. You've heard the statement a grand jury can indict a ham sandwich. But they go back, they felt it was important enough to tell them it was "planned," not "plan." That is a big deal.

So how did we get here? Ms. Friedemann made a mistake, made a few more. The government believed there was a plan to kill out there. They did their job. They investigated it. They continued investigating it. And then we have an overreaction that leads to the indictment on April 3rd. Thought he was going to see Judge Wright. That wasn't true. Ms. Friedemann waited five months to own up to her mistake. That was a month ago. Now we're here at trial.

So the government's case: They're not sure what Mr. Ivers said and neither are we. We've heard a lot of statements. They are going to tell you -- and they did earlier, but I'm sure that Ms. Allyn is going to tell you -- it doesn't matter what he said. Whatever he said was a threat because Mr. Ivers is a bad guy. You shouldn't like him. He says horrible things. He says offensive things,

vulgar things, racist things. He yells, he screams, he rants. He needs to be off the street.

So we don't know what he said, but whatever he said, it's a threat, convict him. Why? Think about the things he's not charged with. Think about the letters he sent. Think about the phone calls, things that did not happen on February 27th, 2018. Think about those things. We don't know what he said on February 27th. Convict him.

So what are we left with? We've got one phone call. No recording. Nothing to listen to. Two witnesses. Changing stories. Different words. Conflicting statements. Sometimes during the same examination you might hear Ms. Friedemann say had imagined, he had imagined and planned in the exact same testimony. We don't know what he said; neither do they.

Case boils down to one sentence: You don't know the 50 different ways I plan to blank. Government says just fill in the blank threat, send him away. You don't know what he said. Do you have doubts about what was said? Do you have doubts about what he meant? Would it have been nice for them to ask what he meant, like the marshals did every time he sent something allegedly threatening to the court? Yeah, it would've been nice. He might've said, like he always did, no, I'm just venting. I'm pissed off about the case. The Judge stole my damned life.

Not sure what he said. The best guess from the two witnesses who talked Mr. Ivers -- Mr. Ivers can't remember, says he doesn't remember -- but best guess from Ms. Friedemann and Rondoni Tavernier, he said something in the past tense. They can't remember exactly what it was, but it was past tense. And you remember the notes. Everything in there is talking about something that happened months in the past, a past conduct. That is not a threat.

When Bob Ivers moved to West Fargo, he wasn't thinking about this case. He wasn't talking about Judge Wright. He wasn't corresponding with the court. He was doing other things. He had a stable situation with his sister. He had a good deal, first time in a long time.

The only time Judge Wright comes up is when Ms. Friedemann and Ms. Rondoni Tavernier call him and unknowingly re-open this old wound. Like we've seen him do, he goes off, he rants, he vents, he screams, he swears. That's scary. But what he was talking about were things that happened in the past. He's not talking about a future plan he has against Judge Wright. He's talking about how he felt about how the case went down, and you heard him talk extensively about that yesterday.

I said at the beginning that I'd like you to treat this deliberation like you're making one of the most important decisions in your life, and that's what the Judge

has instructed you to do. I ask that you do that here.

Would you rely on Ms. Friedemann and Ms. Rondoni Tavernier's memory of what was said during a 30-minute phone call to convict a man? Do we know what was said? Best guess? Something, one of these words, or you can't really remember? Does that give you reasonable doubt about whether or not a threat happened? Would you hesitate to act in one of your most important decisions of your life? Yes.

When you receive the verdict form, we ask that you return a verdict of not guilty on both counts. There wasn't a threat. No threat was made here. Not sure what was said, but not enough to convict a man.

Ms. Allyn is going to have the last word. She's going to be up here in a minute. You're not going to hear from me again. And I'm guessing that she saved some of her best material for last. She is going to have some punchy things, leave some unanswered questions. She knows I can't respond. If she does that, she asks one of those questions, she says something and you're thinking whoa, I have a question about that, think of how I would respond. Think of how Mr. Scott would respond to it. There was no threat here.

Thank you very much.

THE COURT: Ladies and gentlemen, we're going to take a morning recess. We'll reconvene at 20 minutes to

12:00.

THE COURTROOM DEPUTY: All rise.

(A brief recess was taken.)

THE COURTROOM DEPUTY: All rise for the jury.

THE COURT: Please be seated. I'll hear from the government in its rebuttal argument.

MS. ALLYN: Thank you, Your Honor.

The defense attorney made a lot of comments about how this threat is not recorded, but it is recorded. You have seen it over and over and over again (indicating). It's Exhibit 15. It's recorded exactly for the reason that these women are being attacked now.

They are careful attorneys. They are trained as attorneys, so they know when something important is happening, write it down. Write it down verbatim. Write it down immediately. And that's what they did, because they know exact words -- memory later can be harder, but not if you have written it down real-time. This is what they are trained to do as lawyers, and this is who they are. They are careful lawyers.

So what is in these notes is your best record of what is said. And what was said was: "You don't know the 50 different ways I planned to kill her." Really all the evidence you have -- there's no reason to doubt this, especially when you contrast it to what defendant claimed --

defendant claiming didn't even say anything at all. But you have these written notes. These women would not go through everything they went through, overcome those ethical obstacles for any sort of lesser threat as defense wants you to believe. You watched and you heard them testify. You can believe they are credible. Their fear was real because it was a threat.

Now, it's understandable why they might want to try to run away from this word "planned." They might want to try to think if only it was imagined, if only it was thought, because when it's planned, it is a threat. That's why they are trying to refocus you on some of these other words. If you planned to kill and nothing shows you abandoned that plan, it's a threat. That's why they want you to maybe think it's a different word, but it's not. You have the notes.

So then there's this other idea: planned, past tense, versus plan. You heard the barrage of questions to witnesses who actually heard the threat. There was no distinction to them. They heard "planned." They thought "planned" was a threat because it was a threat. Think about it. It's an inherent -- you know what a plan is, right? You make the plan in the past so you can take a future action. I planned my vacation so I can go on vacation. I planned to kill her so I can do it. The witnesses who heard

the threat in the context told you that's how they heard it and that's how they took it, as a threat.

And there's clearly nothing in the past about defendant's anger and loathing for Judge Wright. There's nothing in the past about his understanding that his words are threats. His motive came from the past. That just gives him the motive to say the threat that he did say, to have that present future intent. He planned to kill her. Planned your vacation, you're going to go do it. He never backed off. He was interviewed in March 2014 and he was still angry. He testified before you here yesterday, still angry.

Now, defense had some other things they wanted you to focus on. Right, Mr. Ivers is not being charged with taking a bus trip to Minneapolis. He is being charged with his words from February of 2018. The evidence about the marshals monitoring him is to show you how serious this threat was taken, how important Deputy Wooton took this threat to understand part of the circumstances in the context of this receiving of the threat.

And this idea about venting, if you're venting and you vent a threat, it's still a crime. You don't get to just call it, well, I was venting, I get a get-out-of-jail-free card for it. If you said a threat, whatever your reason, it's still a threat and it's still a

crime. But also this idea that that's all defendant is doing is somehow venting, it's not reasonable with all the other evidence you have. If the defendant really wanted to vent, he could've called Deputy Hattervig. I mean, Deputy Hattervig give him a hundred opportunities. You want to vent, call me. You want to vent, he could've talked to his sister. Because he's not venting. He is mad at specific people when they tell him no, and he wants to use his words as a weapon. He wants them, those people, to hear his words. He wants them to hear the threat. He uses his words as weapons because he knows it scares people. It's not just venting. And even if he wants to call it that, say a threat, it's still a crime.

Defense attorney talked to you too about history and don't pay attention, I guess, to all the other letters you heard and all the other circumstances in the context you have, but this is evidence of what he's retaliating about. It's evidence of his motive and his anger. And it helps to prove how his anger lasts months after months after months, that he is still seething in February 2018. He's still knowing that his words are used as weapons.

This idea that somehow now he's sitting out in North Dakota and he's past this, that's not the time frame at all. If you're following the time frame, while he is in North Dakota is when he is trying to file the second

lawsuit. He has not stopped this obsession at all. Whether he tells his sister or not -- I mean, you heard his sister testify, lovely lady. She says he doesn't talk to her and probably understandably so. She doesn't want to hear what it is this defendant would say.

So he has not abandoned anything while he is in North Dakota. He is still focused. He is still obsessed with Judge Wright. He still knows his words can be used as weapons and so that is what happens. When he is told no by the attorneys, Lora Friedemann and Anne Rondoni Tavernier, he erupts in anger and he issues that threat.

Now, there was also some argument about confidentiality and that defendant couldn't have somehow done this threat because he believed there was some confidentiality. There's no evidence about that, that this defendant thought he had that confidentiality. He didn't testify that way. You do have evidence from Lora Friedemann who said I'm not sure that everybody does really know that because, in part, certainly there are exceptions to confidentiality. There are duties to report. Even the examples given, the medical examples, you still have to report if somebody is saying I plan to kill somebody. That they're going to kill somebody, you need to report that. And that's what a reasonable person understands. And this defendant certainly had that experience, that when he called

up the Clerk and said, I'm a walking bomb, he knows it gets reported.

In any event, this idea of, oh, but they weren't going to tell Judge Wright, remember the jury instruction that if Judge Wright is what you're thinking is a victim of that crime, the defendant -- even if the defendant communicated a threat to someone other than the intended victim, still a threat, because the harm is caused on those people who have to hear it. You saw that with Lora Friedemann and Anne Rondoni Tavernier. They had to feel that disruptive, harmful power when they fear violence. So at that time that crime is complete.

But even this case this defendant still knew that this was going to get to Judge Wright. That's part of what if you were here and listening to him talk about his prior Hennepin County case. If you were following those charges, he was convicted for what a different person, an intended victim, he was leaving a message for a judge heard by a clerk. So he understands that when he uses this threatening language to whoever he says it to, it's then and there a crime.

Now, Mr. Kelley said to you, I think twice, you know, no one asked Mr. Ivers what he meant. Wouldn't it have been nice if somebody had just tried to ask Mr. Ivers what he meant? Well, they did try. I mean, it's exactly

what they did when they went to interview him March 14th in North Dakota. It's exactly what they were trying to do. And if that's supposed to be what they should do to get the answer about his intent, if it was really a threat, well, then they sure did get their answer, because he was so angry. He was so mad. It's at this time he says fuck Judge Wright, he doesn't care if she loses sleep, and he calls her the N word. That is a hate-filled word you heard the testimony about.

So if that's part of the answer that you get to know if that's a threat, then they have their answer. It is a threat. His anger was present and real, nothing about abandonment or apology, because there is nothing in the past about his anger and hatred.

You're asked if you should rely on Lora Friedemann and Anne Rondoni Tavernier. Look who they are, how they testified, what they did, what they had to do. All the behavior of the defendant before and after that underscores the witness testimony, corroborates them. And, yes, you can believe those witnesses. You can believe, as they did, that this was a threat.

The United States is not asking you to convict this defendant because he's a bad guy, because he should be taken off the streets or acts odd. The United States is asking you to convict him because Mr. Ivers used his words

as a weapon to scare. He knows that when he does that that he is threatening, and he wanted it that way. And that's why we are asking you to return verdicts of guilty.

Thank you.

THE COURT: **Instruction No. 16, Election of a Foreperson/Duty to Deliberate**

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict -- whether guilty or not guilty -- must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all of the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty of one or more counts, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court-security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally here in open court. Remember that you should not tell anyone -- including me -- how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room. When each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or court-security officer that you are ready to return to the courtroom.

Mr. Roe and Mr. O'Connor, you were selected as alternates, so I thank you for your service.

The rest of the jurors may go with Ms. Labriola to the jury room. We will send the instructions and the exhibits to the jury room.

THE COURTROOM DEPUTY: All rise.

IN OPEN COURT

(JURY NOT PRESENT)

THE COURT: We'll be in recess.

Raise your hand, marshal, to be sworn.

(Court-security officer administered oath by the Court.)

MR. SCOTT: We already put on the record we went through the exhibits and they are ready to go to the jury.

THE COURT: Thank you.

MR. SCOTT: Location, Your Honor? We're Minneapolis lawyers.

THE COURT: Okay.

MR. SCOTT: And we want to know what your preference is on attendant -- or being attendant to the Court.

THE COURT: Well, we'll contact you as soon as we have any questions or I'll contact you, obviously, when there is a verdict, give you all the time you need to get here. You don't have to stay in the courthouse. I know

some judges insist on that; I don't. I suspect you have more than one client.

MR. SCOTT: And the rest of them help subsidize these cases, Your Honor.

THE COURT: I bet that's true. The same pertains to Ms. Allyn and Mr. Rank. If they have other work to do, just so we can at a reasonable time get together.

MR. SCOTT: Your clerk, I think, now has all of our cell phone numbers.

THE COURT: Good. I want to put on the record how much I enjoyed working with all of you and how well-prepared you were. And, you know, I feel privileged to be able to work with such fine lawyers as you.

MR. RANK: Thank you.

MS. ALLYN: Thank you, Judge.

(Court adjourned at 12:03 p.m.)

* * *

2:51 p.m.

THE COURTROOM DEPUTY: All rise.

THE COURT: Ms. Labriola, do you want to bring the jury in.

You can be seated, please.

THE COURTROOM DEPUTY: All rise for the jury.

IN OPEN COURT

(JURY PRESENT)

THE COURT: Please be seated.

Mr. Marcus, am I safe to assume that you have been selected by your fellow jurors as the foreperson of the jury and, therefore, authorized to speak for the jury here in court?

THE FOREPERSON: Yes, sir.

THE COURT: All right. I want you to listen very carefully. Has the jury unanimously agreed on verdicts with respect to both counts of the grand jury's superseding indictment?

THE FOREPERSON: Yes, sir.

THE COURT: All right. Mr. Marcus, I want you to hand the jury verdict to Ms. Labriola. I'm going to inspect your verdict to see that it complies with the law. Once I do that, I'm going to read it aloud. It will be very important that you listen carefully because the lawyers have the right on behalf of their clients to ask for a polling of the jury, in which case I will ask each of you individually if what I read publicly is, in fact, your verdict.

In the United States District Court for the District of Minnesota, United States of America, Plaintiff v. Robert Phillip Ivers, Defendant, 18-90, Verdict Form.

VERDICT FORM

COUNT ONE

With regard to the crime of threatening to murder a federal judge, as charged in Count One of the indictment, we, the jury, unanimously find the Defendant ROBERT PHILLIP IVERS, the jury has checked the box "GUILTY."

COUNT TWO

With regard to the crime of interstate transmission of a threat to injure the person of another, as charged in Count Two of the Indictment, we, the jury, unanimously find the Defendant ROBERT PHILLIP IVERS on the form "GUILTY" has been marked.

The verdict form has been dated 9-14-18 and signed by the jury foreperson.

Mr. Kelley or Mr. Scott, do you want the jury polled?

MR. SCOTT: Yes, Your Honor.

THE COURT: Mr. Kaliszewski, I will start with you. Is the verdict that I read your verdict?

JUROR KALISZEWSKI: Yes, it is, Your Honor.

THE COURT: Mr. Marcus, is the verdict that I read your verdict?

JUROR MARCUS: Yes.

THE COURT: Mr. Schmitz, is the verdict that I read your verdict?

JUROR TERRANCE SCHMITZ: Yes.

THE COURT: Mr. Schmitz, is the verdict that I read your verdict?

JUROR LUKE SCHMITZ: Yes.

THE COURT: Mr. Notermann, is the verdict that I read your verdict?

JUROR NOTERMANN: Yes, Your Honor.

THE COURT: Ms. Schafer, is the verdict that I read your verdict?

JUROR SCHAFER: Yes, sir.

THE COURT: Ms. Jorgenson, is the verdict that I read your verdict?

JUROR JORGENSON: Yes, sir.

THE COURT: Ms. Johnson, is the verdict that I read your verdict?

JUROR JOHNSON: Yes, Your Honor.

THE COURT: Ms. Leete, is the verdict that I read your verdict?

JUROR LEETE: Yes, Your Honor.

THE COURT: Mr. Vazquez, is the verdict that I read your verdict?

JUROR VAZQUEZ: Yes, Your Honor.

THE COURT: Ms. Johnson, is the verdict that I read your verdict?

JUROR JOHNSON: Yes, sir.

THE COURT: Mr. Milton, is the verdict that I read

your verdict?

JUROR MILTON: Yes, Your Honor.

THE COURT: All right. Ladies and gentlemen, I'll file your verdict as your finding with the clerk of the district court. You have a note from me, along with the evaluation form that I told you about during voir dire. On behalf of the judges of this District of Minnesota and the citizens of the District of Minnesota, I thank you for your service. You may go with the Courtroom Deputy. You're excused.

THE COURTROOM DEPUTY: All rise.

(Jury dismissed.)

IN OPEN COURT

(JURY NOT PRESENT)

THE COURT: Please be seated.

The Court is going to order a presentence investigation in this case. I'll file a formal order. Within 14 days of today, the U.S. Attorney's Office will provide the probation a written statement of the defendant's offense conduct, and then there's a series of dates here. The Probation Office will complete the presentence report within 60 days and submit it to the parties by November 28. Objections will be by November 13th, 2018. The parties will have until November 27 -- I'm sorry, until December 4 to object. I'll set a sentencing date after that in

conformance with your local rule.

Mr. Kelley and Mr. Scott, here's what my Probation Office tells me: I'm going to have a probation officer from Southern Iowa do the report since I think it's inappropriate to have a Minnesota probation officer report.

There is a young woman here named Beth Sanchez. She's a technical writer for Southern Iowa Probation. She cannot visit the jail, as I understand it, so here's what she has asked me to do: Mr. Ivers is detained by the marshals at a local jail under a contract with the marshals. So I think the best option is for one of you to accompany the defendant to the Minneapolis Courthouse where Mr. Ivers can be interviewed by Ms. Sanchez. And I'm going to ask your office and the Marshal Service to coordinate that with Ms. Sanchez.

Are there any other matters the Court has to take up?

MS. ALLYN: Not from the government, Your Honor.

MR. SCOTT: No, Your Honor.

THE COURT: We'll be in recess.

THE LAW CLERK: All rise.

(Court adjourned at 3:15 p.m.)

* * *

I, Debra Beauvais, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: *s/Debra Beauvais*
Debra Beauvais, RPR-CRR